

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JERRY CRABB, as Personal Representative of the
Estate of Angelo Raymond Crabb, Deceased,**

Plaintiff,

v.

CIV NO. 06-942 JP/DJS

DOUGLAS WAYNE GARNER,

Defendants.

RECOMMENDATION

THIS MATTER comes before the Court *sua sponte*. On September 11, 2007, a hearing was held regarding the fairness and adequacy of the proposed settlement of this case. The Court heard presentations by Plaintiff's counsel, Defendants' counsel, and the minor plaintiff's Guardian *Ad Litem*, F. Michael Hart, Esq..

This case is a wrongful death action arising out of an automobile/pedestrian collision that occurred on May 29, 2006. The collision occurred on westbound Interstate 10. Angelo Crabb was a pedestrian and he was struck and killed by an automobile being driven by Douglas Dwayne Garner at the time of the incident. The beneficiaries of Angelo Crabb's estate are Trevor Crabb, age eleven years, and Austanex Massey, age eight years.

The Guardian *Ad Litem* reviewed submissions of counsel and consulted with Plaintiff Jerry Crabb, who appears in this action as the estate's representative. In addition, the Guardian *Ad Litem* consulted with each child's mother, who are in each case the parent providing for their care. The Court notes that Jerry Crabb is a grandparent of Austanex Massy and Trevor Crabb and that Mr.

Crabb was present at the hearing regarding the settlement. The sum agreed upon for settlement will be divided, with one-third going to Plaintiff's counsel for attorney's fees. The remainder of the sum, less the minimal costs incurred in pursuing this action, will be placed into two structured settlements which will provide each child with annuities which will be distributed beginning during their eighteenth year.

The Court finds that the proposed settlement will result in a substantial sum being paid to the minor children who are heirs of the estate and for whom Plaintiff brought this action. Upon review of the file and of the pleadings and in consideration of the Guardian *Ad Litem*'s experience, as well as the Court's experience and knowledge of legal fees in this district, this Court finds that the sum to be paid Plaintiffs' counsel is reasonable and appropriate for the nature of the case and the work performed in pursuing the action. Counsel's efforts were instrumental in obtaining a substantial settlement which is beyond the policy limit of Defendant's insurance. The settlement will address the children's needs by providing money for their entry into adult life, whether that be higher education or some other path. Based upon the representations of the Guardian *Ad Litem*, neither child requires money for maintenance at this time.

IT IS THEREFORE RECOMMENDED that the Court approve the terms of the settlement and enter an order dismissing this action upon its terms.



DON J. SVET
UNITED STATES MAGISTRATE JUDGE